

Rakhee V. Patel – SBT # 00797213
Annmarie Chiarello – SBT # 24097496
WINSTEAD PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Phone: (214) 745-5400
Fax: (214) 745-5390
e-mail: rpatel@winstead.com
e-mail: achiarello@winstead.com

**ATTORNEYS FOR JOSHUA N. TERRY,
PETITIONING CREDITOR**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	Case No. 18-30264-7
ACIS CAPITAL MANAGEMENT, L.P.,	§	Chapter 7
DEBTOR.	§	

IN RE:	§	Case No. 18-30265-7
ACIS CAPITAL MANAGEMENT GP, L.L.C.	§	Chapter 7
DEBTOR.	§	

**OBJECTION TO JOINT MOTION SEEKING EMERGENCY HEARING ON:
JOINT MOTION OF ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL
MANAGEMENT GP, LLC TO DISMISS INVOLUNTARY PETITIONS AND REQUEST
FOR AWARD OF FEES, COSTS, AND DAMAGES**

Joshua N. Terry (the "Mr. Terry" or "Petitioning Creditor"), petitioning creditor in the above-captioned cases (these "Cases"), files this Objection (the "Objection") to the *Joint Motion Seeking Emergency Hearing on Joint Motion of Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Dismiss Involuntary Petitions, and Request for Award of Fees, Costs,*

and Damages [Docket No. 9] (the "Emergency Hearing Motion") and respectfully states the following:

OBJECTION

1. On January 30, 2018 (the "Petition Date"), Mr. Terry, as petitioning creditor, filed an *Involuntary Petition Against a Non-Individual* [Case No. 18-30264-7, Docket No. 1] (the "Acis LP Petition") initiating the Acis Capital Management, L.P. ("Acis LP") bankruptcy case, Case No. 18-30264-SGJ7. On the Petition Date, Mr. Terry, as petitioning creditor, filed an *Involuntary Petition Against a Non-Individual* [Case No. 18-30265-7, Docket No. 1] (the "Acis GP Petition") initiating the Acis Capital Management GP, LLC ("Acis GP") bankruptcy case, Case No 18-30264-SGJ7.

2. On January 31, 2018, Acis LP and Acis GP (collectively, "Acis" or the "Alleged Debtors") filed their *Joint Motion of Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Dismiss Involuntary Petitions, and Request for Award of Fees, Costs, and Damages* [Docket No. 8] (the "Motion to Dismiss"). Mr. Terry intends to contest the Motion to Dismiss. By the Emergency Hearing Motion, the Alleged Debtors wish to have a contested, fact intensive hearing on, *inter alia*, the number of creditors Acis has, on than less one-week's notice and with virtually no time for discovery.

3. In connection with the Motion to Dismiss, Mr. Terry should be afforded sufficient time to conduct discovery as the Alleged Debtors have asserted facts in the Motion to Dismiss that directly contradict sworn testimony in pleadings filed by Acis in related state court litigation. Earlier on the Petition Date (January 30, 2018), in connection with Acis filed their *Motion to Amended Court Order and Leave to Post Supersedeas Deposit* (the "Supersedeas Request") in that action styled *Joshua N. Terry v. Acis Capital Management, L.P. and Acis Capital Management GP, LLC*, Cause No. DC-17-15244 in the 44th Judicial District for Dallas, County

Texas, before the Honorable Bonnie Goldstein (the "State Court Suit"), attaching the *Declaration of David Klos Concerning Defendants' Net Worth* (the "Klos Net Worth Affidavit") which was sworn to under penalty of perjury. A true and correct copy of the Klos Net Worth Affidavit is attached hereto as **Exhibit "A."**

4. The Klos Net Worth Affidavit attaches a copy of the Acis Capital Management, LP Balance Sheet (the "Balance Sheet"). The Balance Sheet lists only three line items for Acis LP's liabilities to non-Highland Capital Management L.P. (on information and belief, an affiliate of Acis) creditors. These liability categories are (1) Accrued Audit Fees; (2) Acis 2013-1 Fee Waiver; and (3) Hewett's Island Fee Accrual.

5. The Klos Net Worth Affidavit, dated January 29, 2018, states in paragraph 2 that "Acis GP does not have a bank account and does **not have any liabilities**. Accordingly, Acis GP has a net worth of zero and the Defendants' [the Alleged Debtors'] cumulative net worth is reflected entirely by the assets and liabilities of Acis LP." Klos Net Worth Affidavit ¶ 2 (emphasis added).

6. Despite the facts presented in the Supersedeas Request, the Net Worth Affidavit and Balance Sheet filed on the Petition Date, Acis represented in the Motion to Dismiss that Acis has over 12 creditors. Sufficient time is required for Mr. Terry to conduct discovery as it relates to this abrupt and dramatic change. Given the Alleged Debtors' own contradictory statements, the Motion to Dismiss should not be heard on an emergency basis, but rather, the Motion to Dismiss should be heard on regular notice.

WHEREFORE, PREMISES CONSIDERED, the Mr. Terry respectfully requests that the Court: (i) deny the Emergency Hearing Motion, and (ii) grant Mr. Terry such further relief, whether in law or in equity, to which he may be justly entitled.

DATED: February 1, 2018.

Respectfully submitted,

WINSTEAD PC

500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400 (Phone)
(214) 745-5390 (Facsimile)
e-mail: rpatel@winstead.com
e-mail: achiarello@winstead.com

By: /s/ Rakhee V. Patel

Rakhee V. Patel – SBT # 00797213

Annmarie Chiarello – SBT # 24097496

**ATTORNEYS FOR JOSHUA N. TERRY,
PETITIONING CREDITOR**

CERTIFICATE OF SERVICE

The undersigned certifies that on February 1, 2018, a true and correct copy of the foregoing Motion will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

/s/ Annmarie Chiarello

One of Counsel